

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 865 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

M/S. SANDVIK ASIA LIMITED

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 865 of 2004
MR PRABHAV MEHTA FOR NANAVATI ASSOCIATES for Petitioner No.1
MR VM PANCHOLI ADDL PUBLIC PROSECUTOR for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 12/01/2005

ORAL JUDGEMENT

Rule. Mr.V.M.Pancholi, learned APP waives service of notice of Rule on behalf of the respondent- State.

2. Heard Mr.Prabhav Mehta, learned counsel for M/s Nanavati Associates for petitioner and Mr.V.M.Pancholi, learned APP for respondent - State.

3. The present petitioner is the original owner of the Mudamal goods / pipes in question and is having its registered office at Puna and manufacturing unit at Rajpur, Taluka Kadi of District Mehsana. The petitioner had manufactured the Mudamal goods i.e. pipes as per the order and specifications contained therein, received by the petitioner from the party based at Zech Republic and the same were sent to Nhavasheva Port, New Mumbai for being exported to Zech Republic through M/s Darshan Roadlines. But the Mudamal goods had not reached in time at Nhavasheva Port and, therefore, necessary enquiry was made with M/s Darshan Roadlines and in turn, it came to the notice that the Mudamal goods had not reached there and therefore, a person from M/s Darshan Roadlines filed a criminal complaint against the driver of vehicle container / trailer having registration number GJ-12-W-9410 directly before the court of learned Chief Judicial Magistrate, Ahmedabad (Rural) on 3.7.2004 viz. one Baljitsingh Bantasingh. In the proceedings of the said complaint, the learned Judge passed an order under Section 156 (3) of the Cr.P.C. directing the Police Inspector of Sabarmati Police Station to investigate into the matter and accordingly, report came to be submitted before the Court concerned. Thereafter, Sabarmati Police Station registered it as Inquiry Case and started investigation. During the course of investigation, the accused was arrested and Mudamal pipes came to be seized. Panchnama of the Mudamal goods also came to be drawn on 16.9.2004. At the end of the investigation, chargesheet was filed. The present petitioner, who is the owner of the goods in question submitted an application under Section 451 of the Cr.P.C. in M.Case No.1 of 2004 praying for release of the Mudamal during pendency and final disposal of the trial on 27.9.2004. In the said proceedings, opinion of the concerned Investigating Agency / Officer was called for and upon receipt of the opinion and having afforded an opportunity of hearing to the learned advocates for the parties, the Court below passed the order on 12.10.2004 permitting custody of the Mudamal to be entrusted to the present petitioner keeping in mind three aspects of the matter, namely the prosecution has accorded its consent, the accused has also given no objection and they are the owner and manufacturer of the Mudamal goods. However, while permitting the petitioner the custody of the Mudamal goods, the Court restrained the present petitioner from transferring, selling or handing over possession of the

Mudamal to anybody during pendency and till final disposal of the criminal case, which has given rise to filing of the present petition.

4. Initially, since the petitioner has filed the present revision in the form of Special Criminal Application, this Court has permitted conversion of the same into Revision Application and after conversion of the form of petition and change of business, the matter has come up before this Court. The learned advocate for the petitioner has highlighted urgency and seriousness of the matter stating that the Mudamal involved are pipes which are manufactured by the petitioner company as per the specifications and orders given by the party based at Zech Republic and as the same is manufactured especially as per orders of the party based at Zech Republic, the same requires to be exported to the party concerned. However, the offence has taken place while in transit of the said goods. It is submitted that condition No.3 imposed by the Court below comes in the way of the export of said Mudamal goods to the party, and since the same is obstructing and frustrating the purpose in respect of the Mudamal, it is prayed that the same requires to be deleted. In support of submissions made on behalf of the petitioner, reliance is placed on a decision of the Apex Court in case of SUNDERBHAI AMBALAL DESAI V. STATE OF GUJARAT, 2003 (2) GLR 1337 to contend that in a given case, the petitioner may be permitted to transfer the said goods to Zech Republic.

5. On the other hand, Mr.Pancholi, learned APP for the State has submitted that the said Mudamal would be required at the time of trial for identification and for that, certain conditions have been imposed by the Court below. Looking to the peculiar facts and circumstances of the case, he has however submitted that the State has no objection in the event of passing of an order by this Court protecting the interest of the prosecution. It is, therefore, prayed that the interest of the prosecution may be taken care of while relaxing the conditions imposed by the trial court.

6. It is undisputed that Mudamal goods are pipe to be exported to the party based at Zech Republic and the offence / incident in question has taken place during the transit of the Mudamal goods. It has come on record that the investigation is over and chargesheet has been filed and therefore, trial will take place in its own course. It is also stated that the Mudamal goods-pipes in question have been manufactured by the petitioner company as per the specifications and the order given by the

party for the purpose of sending the same to the party based at Zech Republic. Therefore, looking to the overall facts and circumstances of the case, the say of the petitioner seems to be justifiable that if the conditions imposed by the court below are not deleted, then whole purpose would be frustrated. At the same time, it is also pertinent to note that both the prosecution and the accused have accorded their consent in writing. Considering the facts and circumstances of the case and the decision of the Apex Court cited before this Court and taking into consideration over all view of the matter, this Court is of the opinion that if the Mudamal goods pipes in question are ordered to be given to the petitioner without any condition but only on the basis of surety and bond as per the order of the court below, it would meet the ends of justice between the parties.

7. Under these circumstances, this Court is inclined to pass the following order.

The application is partly allowed. Subject to condition of exporting the Mudamal goods-pipes to the party to which it is purported to be exported at Zech Republic by retaining one sample pipe of the Mudamal goods-pipes, the conditions Nos.1 to 3 imposed in the order dated 12.10.2004 passed by the learned Judge & J.M.F.C., Ahmedabad (Rural), Navrangpura, Ahmedabad in Sabarmati Police Station M.Case No.1/2004 in Mudamal Application No.59 of 2004 are ordered to be deleted. It is, however, clarified that the conditions as to furnishing surety and bond shall stand unaltered and the same shall have to be complied with by the petitioner accordingly. It is further clarified that one sample pipe to be retained shall be maintained and preserved and shall be produced as and when required. The application, accordingly, stands disposed of. Rule is made absolute to the extent indicated hereinabove. Direct Service is permitted.

Date 12.1.2005 [R.P.Dholakia, J.]

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